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8 Attorney for Plaintiffs

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 JODY CLINE and ELITE CANVASSING,
12 INC.,

13 Plaintiffs,

14 v.

15 CITY OF NAPA, RICHARD MELTON,
16 CHIEF OF POLICE, AARON MEDINA,
17 NAPA POLICE DEPARTMENT, and DOES
1-5,

18 Defendants.

Case No.

10 3237

COMPLAINT FOR VIOLATION OF
CIVIL RIGHTS

DEMAND FOR JURY TRIAL

19 Plaintiffs allege as follows:

20 1. This action is brought pursuant to 42 USC §1983 and other laws to redress
21 deprivation, under color of state and local law, of civil rights guaranteed to plaintiff by the United
22 States Constitution, including the First and Fourteenth Amendments, and California Constitution
23 Article I, § 2.

24 2. This Court has jurisdiction over this matter pursuant to 28 USC §§1343(a)(3) and (4),
25 which grants this Court jurisdiction over claims made pursuant to 42 USC §1983. Jurisdiction is
26 also appropriate pursuant to 28 USC §1331 because the claims for relief derive from the United
27 States Constitution and federal law. Pursuant to 28 USC §1367(a), this Court exercises pendent
28 jurisdiction over claims arising under the California Constitution.

FILED
2000 JUL 23 P 3:18
RICHARD H. WILKINS
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
NP

B7

1 3. Venue is appropriate in the Northern District pursuant to 28 USC §§1391 since
2 defendants are located in the Northern District and all of the actions alleged took place in this
3 District.

4 4. Plaintiff filed a tort claim pursuant to California law with defendant CITY OF NAPA
5 on July 22, 2010.

6 5. Plaintiff JODY CLINE is the owner of ELITE CANVASSING, a California
7 corporation.

8 6. Plaintiff ELITE CANVASSING is a California corporation that works with local
9 newspapers to gain new readers.

10 7. Defendant CITY OF NAPA is a municipal corporation within the State of California.

11 8. Defendant RICHARD MELTON is the Chief of Police for the CITY OF NAPA. In
12 that position, RICHARD MELTON sets the policy for law enforcement in the city and directs the
13 actions of defendant NAPA POLICE DEPARTMENT. RICHARD MELTON is sued in both his
14 individual and official capacities.

15 9. AARON MEDINA is an officer in the NAPA POLICE DEPARTMENT. AARON
16 MEDINA is sued in both his official and individual capacities.

17 10. Defendant NAPA POLICE DEPARTMENT is an agency of the CITY OF NAPA.

18 11. The true names and identities of DOES 1-5 are unknown at this time. On information
19 and belief, DOES 1-5 acted to implement and enforce the policies described below. At the time they
20 took those actions, clearly established law had already determined that similar actions violated rights
21 guaranteed by the First and Fourteenth Amendments to the United States Constitution. DOES 1-5
22 are sued in their individual and official capacities.

23 12. Since the founding of this nation, newspapers have played a vital role in supporting
24 the cause of liberty and preserving democracy. The United States Supreme Court has recognized the
25 role of newspapers in our system of government on numerous occasions. Indeed, Freedom of the
26 Press was viewed as such an essential ingredient in the liberties sought to be preserved by the new
27 Constitution that it was included as part of the very first amendment to the nation's charter.
28

1 13. Even in the Internet Age, newspapers continue to play a vital role in maintaining an
2 informed citizenry. Although there are now numerous channels of information on national and
3 international events, newspapers remain the primary source of in-depth coverage of local
4 government and regional issues.

5 14. Newspapers cannot serve this purpose, however, without readers. The function of the
6 newspaper is to communicate the events of significance to the population most affected by those
7 events. It is for this reason that attempts to restrict the delivery of newspapers is viewed with special
8 skepticism under the state and federal constitutions.

9 15. JODY CLINE and ELITE CANVASSING play a special role in helping connect local
10 newspapers to local readers. Working with local newspapers, ELITE CANVASSING contracts with
11 crews to meet with individual residents in cities throughout Northern California to offer the
12 opportunity for those residents to receive regular deliveries of their local newspapers. ELITE
13 contractors go door-to-door to distribute a copy of the day's local newspaper and offer residents an
14 opportunity to receive that newspaper with reports on local government and regional issues on a
15 daily basis.

16 16. ELITE CANVASSING works directly with the Vallejo Times Herald, a newspaper
17 that has served Napa and Solano Counties for more than 135 years. ELITE CANVASSING
18 contractors seek to distribute copies of the current day's Vallejo Times Herald to residents of Napa.
19 ELITE CANVASSING also seeks to offer the opportunity to residents to receive the Vallejo Times
20 Herald on a daily basis so Napa residents can receive current, in-depth coverage of regional events
21 and the actions of regional and local elected officials.

22 17. Defendant CITY OF NAPA, however, imposes prior restraints on the door-to-door
23 distribution of newspapers. Napa City Code § 5.40.020 requires a license before anyone who does
24 not live in Napa may go door-to-door to distribute a newspaper and offer the opportunity to receive
25 the paper on a daily basis. In order to receive this license, each individual must apply to defendant
26 CHIEF OF POLICE, RICHARD MELTON. Section 5.40.040 of the City Code grants the CHIEF
27 OF POLICE discretion to deny the license if he determines that the solicitation is conducted in a
28 manner that is "a menace to the health, safety, or general welfare of the people of the city." This

1 gives the CHIEF OF POLICE complete discretion to determine who may distribute newspapers in
2 the City and what newspapers they may distribute.

3 18. On information and belief, RICHARD MELTON, AARON MEDINA, and DOES 1-
4 5 expressly targeted the activities of JODY CLINE and ELITE CANVASSING for enforcement of
5 Napa City Code § 5.40.020. Officers of the NAPA POLICE DEPARTMENT were directed to
6 search out contractors working with ELITE CANVASSING and to exclude them from the city.
7 Officers were further directed to issue citations to contractors working with ELITE CANVASSING
8 and to threaten them with arrest and detention until they left the city limits.

9 19. On or about February 5, 2010, Officer AARON MEDINA, an employee of the NAPA
10 POLICE DEPARTMENT, stopped and detained Lamar Francis, an employee of a contractor
11 working with ELITE CANVASSING to distribute the Vallejo Times Herald. Pursuant to the policy
12 set by defendant RICHARD MELTON and pursuant the CITY OF NAPA ordinance, Officer
13 MEDINA issued a citation to Lamar Francis. The citation carried a fine of \$450.00.

14 20. JODY CLINE contacted Officer AARON MEDINA to contest the citation and the
15 actions of the NAPA POLICE DEPARTMENT. JODY CLINE explained that his actions and those
16 of ELITE CANVASSING and its contractors were protected under the First Amendment to the
17 United States Constitution. JODY CLINE asked Officer AARON MEDINA to cease his harassment
18 of ELITE CANVASSING and its employees. In response, Officer AARON MEDINA refused to
19 consider the First Amendment rights of JODY CLINE, ELITE CANVASSING, and their
20 contractors. Instead, Officer AARON MEDINA promised he would issue citations to every member
21 of every crew of contractors working with ELITE CANVASSING and JODY CLINE that attempted
22 to enter the CITY OF NAPA for the purpose of distributing the Vallejo Times Herald to city
23 residents and offering an opportunity to those residents to receive the Vallejo Times Herald on a
24 regular basis.

25 21. The rights to distribute newspapers door-to-door and to invite potential customers to
26 receive the newspaper on a daily basis is well-established in the law. In 1969, the Supreme Court
27 rejected an ordinance that allowed city officials to deny a parade permit if, in their judgment "the
28 public peace, safety, health, decency, good order, morals or convenience require" denial.

1 *Shuttlesworth v. Birmingham*, 394 U.S. 147, 149-150 (1969). These precedents have been applied to
 2 the sale of newspapers since at least 1988. *City of Lakewood v. Plain Dealer Publishing Co.*, 486
 3 U.S. 750, 772 (1988). In *Lakewood*, the Court ruled that such licensing schemes were subject to
 4 facial attack and that there was no need to first apply for a license. *Id.*

5 **FIRST CAUSE OF ACTION**

6 (42 USC §1983 – Violation of Freedom of Speech and Press in violation of the
 7 First and Fourteenth Amendments to the United States Constitution)

8 22. Plaintiffs restate and incorporate the allegations of paragraphs 1-20, inclusive.

9 23. The requirement for every employee of ELITE CANVASSING to obtain a license
 10 and the authorization for the Chief of Police to deny that license at a whim imposes a prior restraint
 11 on JODY CLINE and ELITE CANVASSING in their efforts to distribute copies of the current
 12 edition of the Vallejo Times Herald and offer residents the opportunity to receive the Vallejo Times
 13 Herald on a daily basis.

14 24. As a result of defendants' actions, plaintiffs have suffered and will continue to suffer
 15 irreparable injury unless the Court acts to enjoin the illegal actions described herein.

16 25. Unless restrained by order of this Court, defendants will continue to enforce Napa
 17 City Code § 5.40.020, *et seq.* and will continue to target plaintiffs for arrest, detention, and/or
 18 citation.

19 **SECOND CAUSE OF ACTION**

20 (42 USC §1983 – Violation of Freedom of Speech and Press in violation of the
 21 First and Fourteenth Amendments to the United States Constitution)

22 26. Plaintiffs restate and incorporate the allegations of paragraphs 1-20, inclusive.

23 27. Defendants are targeting ELITE CANVASSING and JODY CLINE, and the
 24 contractors working with them, for harassment based on the exercise of their First Amendment
 25 rights. As a result, plaintiffs have suffered damages in an amount that cannot be determined.

26 28. On information and belief, defendant MELTON and DOES 1-5, undertook these
 27 actions with oppression, malice, spite, and ill-will toward plaintiffs, and acted in intentional and
 28 reckless disregard of plaintiffs' rights under the Constitution. As a consequence plaintiffs are
 entitled to recover compensatory, special, and exemplary damages according to proof.

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THIRD CAUSE OF ACTION
(Violation of Freedom of Speech and Press Guaranteed by
California Constitution, Article I, §2)

29. Plaintiffs restate and incorporate the allegations of paragraphs 1-20, inclusive.

30. The requirement for every employee of every contractor that works with ELITE CANVASSING to obtain a license and the authorization for the Chief of Police to deny that license at a whim imposes a prior restraint on JODY CLINE and ELITE CANVASSING, and the contractors that work with them, in their efforts to distribute copies of the current edition of the Vallejo Times Herald and offer residents the opportunity to receive the Vallejo Times Herald on a daily basis.

31. As a result of defendants' actions, plaintiffs have suffered and will continue to suffer irreparable injury unless the Court acts to enjoin the illegal actions described herein.

32. Unless restrained by order of this Court, defendants will continue to enforce Napa City Code § 5.40.020, *et seq.* and will continue to target plaintiffs for arrest, detention, and/or citation.

WHEREFORE, plaintiff prays for relief against defendants, and each of them, as follows:

1. For a preliminary and permanent injunction restraining CITY OF NAPA, RICHARD MELTON, AARON MEDINA, the NAPA POLICE DEPARTMENT, and DOES 1-5 from enforcing any current licensing requirements on the activities of JODY CLINE and ELITE CANVASSING, and the contractors that work with them, in distributing newspapers to the residents of Napa and offering those residents the opportunity to receive the newspaper on a regular basis;

2. For a preliminary and permanent injunction restraining CITY OF NAPA, RICHARD MELTON, AARON MEDINA, the NAPA POLICE DEPARTMENT, and DOES 1-5 from enforcing any licensing requirements on the activities of JODY CLINE and ELITE CANVASSING in distributing newspapers to the residents of Napa and offering those residents the opportunity to receive the newspaper on a regular basis, that grants the Chief of Police or any other city official the power to deny a license on his view that the distribution would constitute a menace to the public health, safety, or general welfare of the people of the City;

1 3. For general damages in an amount that has not been ascertained but which are
2 estimated to exceed \$50,000;

3 4. For exemplary damages of not less than \$50,000;

4 5. For costs of suit and reasonable attorneys fees; and

5 6. For such other relief as the Court deems just and proper.

6 DATED: July 22, 2010.

7
8 Respectfully submitted,

9 Law Office of Anthony T. Caso
10 ANTHONY T. CASO

11 
12 Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs request a jury trial in this matter.

DATED: July 12, 2010.

Respectfully submitted,

Law Office of Anthony T. Caso
ANTHONY T. CASO

Attorney for Plaintiffs